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MONTANA LEGISLATIVE HISTORY

Chapter 463 1989

Bill H 169 S _____ Original bill & history T C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	3/31	X C	Hearing Date(s)	3/13	X C
	2/18	X C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Ch. No.	Senate Bill	House Bill	Sponsor	Title
461	452		Gage	AN ACT GENERALLY REVISING THE LAWS RELATING TO JAILS, JAIL ADMINISTRATORS, AND INMATES; REDEFINING JAILS AS DETENTION CENTERS; DEFINING TERMS; PROVIDING FOR THE ADMINISTRATION OF DETENTION CENTERS; PROVIDING FOR MULTIJURISDICTIONAL DETENTION CENTERS; REGULATING DETENTION OF JUVENILES IN DETENTION CENTERS; REQUIRING INMATES TO PAY CONFINEMENT COSTS; ALLOWING THE TEMPORARY RELEASE OF INMATES; CREATING CRIMINAL OFFENSES RELATED TO THE TREATMENT OF INMATES; AMENDING SECTIONS 7-32-2121, 7-32-2123, 7-32-2127, 7-32-2128, 7-32-2132, 7-32-2143, 7-32-2201 THROUGH 7-32-2205, 7-32-2207, 7-32-2208, 7-32-2211, 7-32-2222, 7-32-2231 THROUGH 7-32-2234, AND 7-32-4201, MCA; AND REPEALING SECTIONS 7-32-2206, 7-32-2209, 7-32-2210, 7-32-2212, 7-32-2213, 7-32-2221, 7-32-2223, 7-32-4202, AND 7-32-4203, MCA.....Page 1095
462	196		Yellowtail	AN ACT INCREASING SALARIES PAID SUPREME COURT JUSTICES AND DISTRICT COURT JUDGES; SEPARATING SALARIES OF NONPARTISAN JUDICIAL OFFICERS FROM SALARIES OF PARTISAN ELECTED OFFICIALS; AMENDING SECTIONS 2-16-405, 3-2-104, AND 3-5-211, MCA; AND PROVIDING AN EFFECTIVE DATE.....Page 1105
463		169	Lee	AN ACT PROVIDING THAT WHEN IMPOSITION OF A SENTENCE IS DEFERRED, THE DEFERRAL PERIOD HAS PASSED, AND THE CHARGES ARE DISMISSED, THE DEFENDANT'S RECORD MAY NOT BE EXPUNGED; PROVIDING FOR NOTICE OF DISMISSAL; RESTRICTING ACCESS TO THE RECORDS; AMENDING SECTION 46-18-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.....Page 1106
464		211	Addy	AN ACT ALLOWING AN APPLICANT FOR LICENSURE AS A NURSING HOME ADMINISTRATOR TO SATISFY THE EDUCATION AND EXPERIENCE REQUIREMENTS BY PRESENTING EVIDENCE OF SUFFICIENT EDUCATION, TRAINING, OR EXPERIENCE, OR A COMBINATION OF EDUCATION, TRAINING, AND EXPERIENCE; AND AMENDING SECTION 37-9-301, MCA.....Page 1107
465		222	Menahan	AN ACT TO GENERALLY REVISE THE LAW RELATING TO THE DISCIPLINE OF BARBER LICENSEES; ALLOWING THE BOARD OF BARBERS TO DISCIPLINE A LICENSED BARBER; ALLOWING THE BOARD TO DEFINE, BY RULE, UNPROFESSIONAL CONDUCT; AND AMENDING SECTION 37-30-425, MCA. .....Page 1108
466		346	Rice	AN ACT TO ALLOW A SCHOOL DISTRICT OR COMMUNITY COLLEGE DISTRICT TO DESIGNATE SCHOOL OR COMMUNITY COLLEGE FACILITIES AS TOBACCO-FREE AREAS BY EXEMPTING SCHOOL DISTRICTS AND COMMUNITY COLLEGE DISTRICTS FROM THE REQUIREMENT TO PROVIDE SMOKING AREAS IN WORK AREAS; AND AMENDING SECTIONS 50-40-107 AND 50-40-201, MCA.....Page 1109
467		394	Clark	AN ACT CLARIFYING WHAT INFORMATION MAY BE RELEASED BY THE DEPARTMENT OF JUSTICE IN AN ABSTRACT OF THE DRIVING RECORD OF A LICENSEE; PROVIDING FOR FEES; AMENDING SECTION 61-11-105, MCA; AND REPEALING SECTION 61-6-107, MCA. .....Page 1110
468		413	Westlake	AN ACT ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, IN CONJUNCTION WITH ONE OR MORE HOLDERS OF VALID WATER RIGHTS IN THE SOURCE, TO APPLY TO THE DISTRICT COURT FOR APPOINTMENT OF A WATER COMMISSIONER IN A SOURCE OR AREA WHERE A FINAL DECREE HAS BEEN ISSUED; PROVIDING THAT THE DEPARTMENT MAY BE INCLUDED IN THE APPORTIONMENT OF COSTS IF IT APPLIES FOR APPOINTMENT OF A WATER COMMISSIONER; AMENDING SECTION 85-5-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. .....Page 1111
469		166	Good	AN ACT TO ALLOW A CREDIT AGAINST MONTANA INDIVIDUAL INCOME TAX FOR CERTAIN EXPENSES INCURRED IN THE CARE OF CERTAIN ELDERLY FAMILY MEMBERS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.....Page 1112

TESTS PERFORMED BY THE DEPARTMENT; AMENDING SE TIONS 50-1-202 AND 75-6-103, MCA; AND PROVIDING AN IMME ATE EFFECTIVE DATE."

HOUSE PAGE NO. 87, 140, 151, **170,** 177, **201,** 1076, **1109,** 11 1269, 1273, 1300, 1609.

SENATE PAGE NO. 145, 147, 618, **628,** 643, **654,** 728, 802.

0168 INTRODUCED BY LEE, ET AL.: A BILL FOR AN ACT ENTITLED "AN ACT PROVIDING THAT IF A PERSON SERVING A SE TENCE IS AGAIN CONVICTED, THE TWO SENTENCES A SERVED CONSECUTIVELY UNLESS THE COURT ORDE OTHERWISE; AND AMENDING SECTION 46-18-401, MCA."

HOUSE PAGE NO. 87, 281, 287, 314, 325, 362, 1053, 1104, 1125, 12

SENATE PAGE NO. 254, 255, 610, **620,** 623, **637,** 686.

0169 INTRODUCED BY LEE, ET AL.: A BILL FOR AN ACT ENTITLE "AN ACT PROVIDING THAT WHEN IMPOSITION OF A SE TENCE IS DEFERRED, THE DEFERRAL PERIOD HAS PASSE AND THE CHARGES ARE DISMISSED, THE DEFENDAN RECORD MAY NOT BE EXPUNGED; AND AMENDING SECTI 46-18-204, MCA."

HOUSE PAGE NO. 87, 747, 755, **767,** 795, **865,** 1339, **1703,** 1 1813, 1865, 1895.

SENATE PAGE NO. 578, 584, 766, **792,** 802, **813,** 1013, 1053.

0170 INTRODUCED BY HAYNE, ET AL. (BY REQUEST OF THE DEPA MENT OF AGRICULTURE): A BILL FOR AN ACT ENTITLED: ACT TO MAKE DISCRETIONARY RATHER THAN MANDATO THE DUTIES OF THE DEPARTMENT OF AGRICULTURE W RESPECT TO CROP INSECT DETECTION AND MANAGEME AMENDING SECTION 80-7-503, MCA; AND PROVIDING IMMEDIATE EFFECTIVE DATE."

HOUSE PAGE NO. 87, 151, 163, **181,** 189, **212,** 646, 958, 959, 10

SENATE PAGE NO. 155, 156, 342, 399, **420,** 616.

0171 INTRODUCED BY SWIFT, ET AL.: A BILL FOR AN ACT ENTITL "AN ACT REQUIRING A WRITE-IN CANDIDATE TO FILE A LARATION OF INTENT; PROHIBITING THE COUNTIN RECORDING OF VOTES CAST FOR A WRITE-IN CANDI WHO HAS NOT FILED A DECLARATION OF INTENT; AMEN SECTIONS 13-13-117 AND 13-15-202, MCA; AND PROVIDIN IMMEDIATE EFFECTIVE DATE."

HOUSE PAGE NO. 87, 418, 421, **458, 494,** 505, **561,** 1222, **1290,** 1517, 1561, 1613, **1726.**

SENATE PAGE NO. 381, 382, 689, **711,** 726, **736,** 824, 959.

0172 INTRODUCED BY SWIFT, ET AL.: A BILL FOR AN ACT ENTIT "AN ACT MAKING IT CRIMINAL MISCHIEF TO PURPOSE KNOWINGLY INSERT INTO A TREE, LOG, OR PIECE OF THAT IS INTENDED TO BE HARVESTED, PROCESSED MANUFACTURED A SUBSTANCE THAT IS HARD ENOU DAMAGE A SAW OR OTHER EQUIPMENT; AND AMEN SECTION 45-6-101, MCA."

3/21 SIGNED BY GOVERNOR
CHAPTER NUMBER 197 EFFECTIVE DATE: 3/21/89

HB 168 INTRODUCED BY LEE, ET AL.
CERTAIN SENTENCES TO BE SERVED CONSECUTIVELY

1/13 INTRODUCED
1/14 REFERRED TO JUDICIARY
1/16 FISCAL NOTE REQUESTED
1/23 FISCAL NOTE RECEIVED
1/23 FISCAL NOTE PRINTED
1/31 HEARING
1/31 COMMITTEE REPORT--BILL PASSED
2/02 2ND READING PASSED 72 23
2/04 3RD READING PASSED 74 21

TRANSMITTED TO SENATE
2/06 REFERRED TO JUDICIARY
2/28 HEARING
3/02 COMMITTEE REPORT--BILL CONCURRED
3/03 2ND READING CONCURRED 24 22
3/06 3RD READING CONCURRED 28 22

RETURNED TO HOUSE
3/09 SIGNED BY SPEAKER
3/09 SIGNED BY PRESIDENT
3/09 TRANSMITTED TO GOVERNOR
3/13 SIGNED BY GOVERNOR
CHAPTER NUMBER 76 EFFECTIVE DATE: 10/01/89

HB 169 INTRODUCED BY LEE, ET AL.
PROVIDE NO EXPUNGEMENT OF RECORD WHEN SENTENCE IMPOSITION IS DEFERRED

1/13 INTRODUCED
1/14 REFERRED TO JUDICIARY
1/31 HEARING
1/31 TABLED IN COMMITTEE
2/18 TAKEN FROM THE TABLE BY COMMITTEE
2/18 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/20 2ND READING PASSED 75 22
2/21 3RD READING PASSED 83 14

TRANSMITTED TO SENATE
2/28 REFERRED TO JUDICIARY
3/13 HEARING
3/14 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
3/15 2ND READING CONCURRED 47 0
3/17 3RD READING CONCURRED 47 0

RETURNED TO HOUSE WITH AMENDMENTS
3/30 2ND READING AMENDMENTS CONCURRED 95 2
3/31 3RD READING AMENDMENTS CONCURRED 94 1

4/04 SIGNED BY SPEAKER
4/04 SIGNED BY PRESIDENT
4/05 TRANSMITTED TO GOVERNOR
4/06 SIGNED BY GOVERNOR
CHAPTER NUMBER 463 EFFECTIVE DATE: 4/06/89

HOUSE BILL NO. 169

INTRODUCED BY LEE, BISHOP, CONNELLY

IN THE HOUSE

JANUARY 13, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 14, 1989	FIRST READING.
FEBRUARY 18, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1989	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 21, 1989	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 83; NOES, 14.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 14, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 15, 1989	SECOND READING, CONCURRED IN.
MARCH 17, 1989	THIRD READING, CONCURRED IN. AYES, 47; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 30, 1989	RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS CONCURRED IN.

MARCH 31, 1989

THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 169

INTRODUCED BY Lee Bishop Connelly

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT WHEN IMPOSITION OF A SENTENCE IS DEFERRED, THE DEFERRAL PERIOD HAS PASSED, AND THE CHARGES ARE DISMISSED, THE DEFENDANT'S RECORD MAY NOT BE EXPUNGED; AND AMENDING SECTION 46-18-204, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-204, MCA, is amended to read:

"46-18-204. Dismissal after deferred imposition. Whenever the court has deferred the imposition of sentence and after termination of the time period during which imposition of sentence has been deferred, upon motion of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw his plea of guilty or may strike the verdict of guilty from the record and order that the charge or charges against him be dismissed. Upon dismissal of the charges, ~~the court shall send an order directing the department of justice to expunge~~ the defendant's record may not be expunged. ~~The order must adequately identify the defendant, such as by sex, race, date of birth, and the current status of the charges to be expunged.~~"

-End-

Montana Legislative Council

INTRODUCED BILL
HB 169

Form CS-32
Rev. 1985

STATUS SHEET

51 LEGISLATIVE SESSION

JUDICIARY COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CONSIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CONCURRED IN DATE	BE NOT CONCURRED IN DATE	BE CONCURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
HB 168	1-14	1-31	1-31	1-31							
HB 169	1-14	1-31	2-18			2-18					
HB 172	1-14	1-24	1-24			1-24					
HB 177	1-14	1-20	2-3			2-3					
HB 178	1-14	1-20	1-25	1-25							
HB 179	1-16	1-31	1-31	1-31							
HB 185	1-16	1-27	2-6			2-6					
HB 189	1-16	1-24	1-24	1-24							
HB 194	1-16	1-24	TABLED	ON 1-24							
HB 197	1-17	1-27	2-3			2-3					
HB 204	1-17	1-30	1-31			1-31					
HB 206	1-17	2-1	2-1			2-1					
HB 231	1-17	1-26	2-1			2-1					
HB 232	1-17	1-27	2-9			2-9					

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

judges have imposed or which may be pending for disposition in other jurisdictions in the case of an offender who has moved around the state committing one crime here and another crime there. This will have a tendency to make judges more alert to all of the circumstances involved with a particular offender when they make a decision with respect to concurrent or consecutive.

Rep. Boharski asked Mr. Keedy if the reason for bringing this bill had anything to do with the fact that judges aren't doing an adequate job of sentencing. Judges have always had the discretion to require those sentences to be served consecutively. Mr. Keedy responded that was true and that in a number of cases judges just simply are ignorant of all of the circumstances involved. The fact the other charges may be pending in another jurisdiction and then later when those charges are disposed of in that jurisdiction the follow-up judge is not attentive to what happened in the case before him. Judges are like every other human being and sometimes gloss over the practical effect of what they do.

Closing by Sponsor: Rep. Lee closed.

DISPOSITION OF HOUSE BILL 168

Motion: Rep. Gould moved HB 168 DO PASS. Rep. Brooke seconded.

Discussion: Rep. Addy spoke in favor of the motion because it provides for the true impact of the judge's determination. Rep. Brown stated that this bill deals with policy matter and not fiscal impact.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion that HB 168 DO PASS CARRIED unanimously.

HEARING ON HOUSE BILL 169

Presentation and Opening Statement by Sponsor:

Rep. Thomas Lee, District 49, stated that HB 169 is an act providing when an imposition of a sentence is deferred the deferral period has passed and the charges are dismissed the defendant's record may not be expunged. This bill reverses the current situation regarding the expungement upon successful completion of deferred sentences. After a person has successfully completed serving a deferred sentence his record concerning that crime is expunged. The Department of Justice has an amendment to offer to this bill to which he does not object. From prior experience in law enforcement as a federal narcotics agent in Chicago, it is clear how valuable access to criminal records are in the course of

developing an investigation, determining criminal behavior, and the absence or presence of such a record is often an indicator of the degree of caution that law enforcement personnel exercise toward a particular defendant. These records are also an important consideration for judges in their pre-sentence investigation and considerations. For these reasons they should be maintained and retrievable for these interested parties. He urged favorable consideration.

Testifying Proponents and Who They Represent:

Michael Keedy, Kalispell District Judge
John Connor, Department of Justice and Montana County Attorney's Association
Wally Jewell, Montana Magistrates Association

Proponent Testimony:

Michael Keedy supports the bill and does not oppose the amendment suggested. There are a number of ways that a judge can place an offender on probation when he has been convicted of a felony at the district court level. One is to impose a sentence against him and then suspend it wholly or in part, placing him on probation for a period of time. The court also has the authority to defer the imposition of sentence which is to postpone the day of reckoning for an offender - place him on probation with certain conditions on his activities during that probationary term with the understanding that if he completes it successfully then the charges pending against him can be dismissed. Under present law the record of his conviction can be erased or expunged. The 1987 session added the language to Sec. 46-18-204 that provides upon dismissal of the charges the court shall send an order directing the Department of Justice to expunge the defendant's record. The practical difficulty with this is well illustrated by the opinion of Montana Attorney General last summer who construed this new language to mean that literally, physically the record of an offender's conviction in these circumstances would have to be annihilated - destroyed by clerks of court, law enforcement agencies and the Department of Justice and all courts so that in future cases when an offender who had successfully completed a deferred sentence came before the court for subsequent offenses the court would be ignorant of his criminal history in fashioning an appropriate sentence for him. This is completely in conflict with the Legislature's decision in 1981 that one who has been convicted of a felony is not entitled to a deferred imposition of sentence. There is no way that a judge is going to know that an offender is a former felon if the record of his conviction has been wiped off the books as the current statute provides. He personally would be much more reluctant to impose deferred sentences in his court in future felony cases knowing that there will be no record for the future should the person commit additional felony crimes. Law enforcement needs to

be aware of a felon's past and the information should be available to the court of record.

John Connor stated that the Montana County Attorneys Association supports the concept of this bill and had requested a similar bill be introduced by Rep. Rice. The amendments mentioned previously might make it unnecessary to go forward with that bill if additional amendments were made to this bill. The county attorneys have had considerable problems with this law since it was passed in 1987. The problems are practical ones resulting from the construction of that statute by the AG's opinion last summer. This opinion said that when a deferred imposition of sentence results in a dismissal of charges, the expungement of the defendant's record (mandated by 46-18-204) requires that all documentation and physical or automated entries concerning the expunged defense be physically destroyed or obliterated. However laudable the concept of trying to give someone another chance by expunging their record might be, the practical effect of the construction of this statute is that upon successful completion of deferred sentence, all police reports, all fingerprint records, all booking sheets, jail roster records, docket entries by the clerk of court must be destroyed. This has produced some incredible practical problems. One or two of them were articulated by Judge Keedy. To begin with there is a statute (46-18-2016) which states that you cannot receive a deferred sentence if you have been convicted of a prior felony. The construction of this expungement statute is in conflict with that and allows people who have been convicted of a felony offense to receive many deferred sentences. He makes application for a job and somehow the employer gets wind of the fact as often happens within communities of the fact that this person was in trouble and asks him to explain the nature of the trouble and more importantly the subsequent development with it legally. He can't even prove that because the record is expunged including the order of expungement. Everything is wiped out. The person is in a position where he can't explain to this prospective employer what his situation is with this offense. Further, when state and local governments destroy records as they are mandated to do now, they are put in a position of having to defend against subsequent civil suits that may be filed by a person who was charged with an offense if something happened to that person while in jail and he decides to sue the county. He has completed his deferred sentence and so all the records are destroyed and the county is put in a bad position and its' insurer is in a very bad position because they do not have the necessary records to reconstruct what happened when that person was in jail. It is also not clear whether the 1987 amendment to the statute is prospective or retroactive. There is case law to the effect that when punishment is lessened by a statute it is supposed to be applied retroactively so that a person convicted previously should have this expungement occur as far as his record is

concerned also. This has resulted in some inconsistent application of this statute. The Department of Institutions has problems with this because probation and parole officers have to maintain records for adequate supervision of these people. It is not clear from the statute or from the Attorney General's opinion what happens with their records. The Department has to take the position that those records ought to be expunged. Conceivably the court reporter's notes have to be destroyed as it relates to that person's sentencing. Another problem is that the records that are destroyed often contain important data regarding other offenders and in some instances, intelligence information relating to other crimes. You either have to try and reconstruct that without using those reports or you have to painstakingly go through police reports and obliterate information relating to a particular defendant while preserving information pertaining to a co-defendant. The manpower that is required to go through and expunge records in the sheriff's office relating to offenders especially if it were applied retroactively would just be incredible. In many cases what is happening since July, 1988 when the Attorney General's opinion came out is that this just isn't being done. Local governments are being exposed to potential liability for not completing the requirements of the statute and the mandates of the opinion. A change is in order in this statute and as previous testimony shows, the proposed amendments address some of the concerns of the Department of Justice as a record keeping agency while allowing to some degree the intent of the original bill in 1987 to be maintained. One of the problems that the state experiences is that as a record keeper, the I.D. bureau of the Department of Justice has to maintain fingerprints and criminal history records of people who are charged with offenses. They are made available to law enforcement agencies and to sentencing courts for purposes of dealing with an offender. The records that they maintain now are part of the impetus for this change in 1987. The Department of Justice wasn't getting any information about what happened after someone completed the deferred imposition of sentence. Their records would show that he was charged with a felony offense and in some instances that he received a deferred sentence but nothing was ever given to the Department of Justice thereafter to indicate what happened. So these records were open-ended and the Department wanted something done that would allow them to receive information that would indicate what happened. As it turned out, the expungement statute resulted. The Department's position is that it should be amended. (EXHIBIT 1). This amendment would give direction to the person when applying for a job.

Wally Jewell testified in support of House Bill 169. EXHIBIT 2.

Testifying Opponents and Who They Represent:

Michael Sherwood, Montana Trial Lawyers Association

Opponent Testimony:

Michael Sherwood stood in opposition to House Bill 169. EXHIBIT 3.

Questions From Committee Members: Rep. Eudaily asked Mr. Connor about the suggested amendments and about the circumstances where a person applies for a job and the potential employer checks for a criminal record. Mr. Connor responded that one of the major concerns that people have is that the offender needs to have an opportunity to be able to convince the prospective employer that nothing has ever happened to him. The employer may have a right to know that the offender committed an offense, given a deferred sentence and completed that deferred sentence.

Rep. Hannah asked Mr. Connor if this law applies to felonies only. Mr. Connor responded that the statute applies to both district and justice court action. Rep. Hannah asked if there has been discussion if concerns were focused on felonies rather than misdemeanors. Mr. Connor stated that the actual expungement problem is more dramatic in the misdemeanor side because there are more of them. Rep. Hannah asked if this affected youth court records. Mr. Connor stated the records are specifically youth court records and are confidential by statute and cannot be opened without a court order.

Rep. Daily asked Mr. Connor for clarification that once a person receives a deferred sentence and they petition the court to have their record expunged, can that information ever be used again against that person. Mr. Connor explained that the law says that if you receive a deferred imposition of sentence and you successfully complete the terms of that sentence, you can come back and petition the court to change your plea from guilty to not guilty and then the court enters an order dismissing the charge. There is no statute except for the one referred to today where the information can be used against the defendant.

Rep. Brooke asked Mr. Connor about the last part of the amendment Mr. Connor stated that the person is given the opportunity to take advantage of the deferred imposition of sentence. The language is taken from a similar statute in the state of Utah. It is proposed only because he is trying to address some of the concerns from 1987 when the statute was first passed.

Rep. Boharski stated that he did not see how the proposed amendment has any affect. Mr. Connor responded that he

tried to address the major concerns from 1987 as related to employment inquiries.

Closing by Sponsor: Rep. Lee stated that he did not disagree with Mr. Sherwood's motive in opposing this bill; however, the issues brought up by Mr. Connor are valid. He urged the committee's favorable consideration.

DISPOSITION OF HOUSE BILL 169

Motion: Rep. Addy moved that HB 169 DO NOT PASS. Rep. Wyatt seconded.

Discussion: Rep. Addy stated that if a person is given a deferred sentence and after completing the conditions, the record is not expunged, then the person is still stuck with a record. This is a plea bargaining tool. People should only be eligible for this after making only one mistake and only a very minor mistake. Administrative hardship is a poor reason for such a bill.

Rep. Aafedt felt that it might be a serious problem to have employers knowing about a person's guilt. Employers that is contemplating hiring a person to handle money or merchandise has a right to know if a person has been convicted or stealing or robbing in the past. Rep. Addy stated that in such circumstances the judge should not give a deferred imposition of sentence.

Rep. Daily spoke against the motion because the objective is prevent more than one deferred sentence. The only way it is known that the person has previous deferred sentences is if the record is retained. The bill should be amended to read that only an employer could not have that record.

Rep. Brooke asked that further executive action be deferred until a later time. Rep. Brown agreed to hold further action until their meeting this afternoon or 24 hours. His preference is to hold only until after the lunch break.

Rep. Gould commented that he agreed with the Department of Justice's proposal that employers be given a form that says the person has completed a deferred imposition of sentence.

Rep. Addy expressed concern over the procedure suggested by Mr. Connor because the person is given a mixed signal that possibly he should lie on job applications when responding to criminal record questions.

Rep. Boharski commented that the amendments are confusing and liked the bill the way it is.

Rep. Boharski made a substitute motion of DO PASS. Rep. Hannah seconded.

Amendments, Discussion, and Votes: Rep. Daily gave copies of suggested and moved the amendments in Exhibit 8. Rep. Addy seconded. Rep. Daily felt that information on deferred sentences is important to law enforcement people. A person should not be denied a job because of such a sentence.

Rep. Hannah asked if there might be a case where it might be to a person's advantage to get the information out. Rep. Daily thought the person could get the information to the employer.

Rep. Gould stated that Mr. Connor explained that since the 1987 law took effect, there is a problem with people knowing about an incident and an employer questions a potential employee, the employee then is prevented from giving the proof because the records have been destroyed.

Rep. Daily did not think this amendment would prevent a person from giving that information to a potential employer if he wanted to. The amendment is attempting to prevent employers from checking. The bill is a good bill if the employment factor is taken care of.

Rep. Eudaily asked if these records are public records. John MacMaster responded negatively. Rep. Eudaily said that the last sentence prevents the information from being given. Mike Sherwood clarified for the committee that court records are public records. Rep. Daily said that the only reason the last sentence is included is to prevent employers from forcing a person to sign a waiver.

The motion to amend CARRIED with Reps. Eudaily and Gould opposing.

Recommendation and Vote: Rep. Daily moved HB 169 DO PASS AS AMENDED. Rep. Hannah seconded.

Rep. Addy stated his opposition to the bill because there is no assurance to a person receiving a deferred sentence cannot be assured that a prospective employer does not get their record is by expungement.

Roll call vote was taken. The motion FAILED 6 - 12.

Rep. Addy moved to TABLE HB 169. Rep. Darko seconded. Rep. Hannah made a substitute motion to reconsider the previous action. He objected to tabling the bill and felt the law as it is presently creates problems and should be dealt with. The bill should not be hidden in committee. Rep. Mercer did not agree that a tabling motion is a method of hiding the bill in committee in this instance. Vote reversal will take 60 people on the floor to overturn. If it is tabled, it will only take a majority of this committee to move it if it was deemed appropriate. Tabling makes more sense. Rep. Daily seconded Rep. Hannah's motion.

Rep. Hannah withdrew his substitute motion.

Rep. Addy's motion to TABLE was then considered. The motion CARRIED with Reps. Daily, Aafedt, Boharski, Hannah, Gould and Knapp opposing.

HEARING ON HOUSE BILL 179

Presentation and Opening Statement by Sponsor:

Rep. Tom Lee, District 49, stated that this bill would remove the two year limitation in modification in a dissolution of marriage or legal separation that does not contain provisions relating to maintenance or support. The intent is to correct the current situation that occurs in a divorce decree or separation decree in which after the two years have passed there may be no further changes or amendments made or changes in the decree. The advantages to the children or the custodial parent are obvious.

Testifying Proponents and Who They Represent:

Mike Keedy, Kalispell

Proponent Testimony:

Mr. Keedy stated that the Montana Legislature enacted the Uniform Marriage and Divorce Act in the mid-1970's. In the 1979 session a bill was introduced to clarify that under the act a decree of divorce could be modified by a court to provide child support and/or maintenance in cases where the original decree did not contain such provisions. The bill was amended to provide for a two year statute of limitations on a custodial parent's ability to receive child support or maintenance.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Darko asked Mr. Keedy if the converse would be true where child support could be decreased as well. Could the father petition to have support lowered because his circumstances have changed adversely? Mr. Keedy stated that if there is a provision in the decree for child support then the custodial parent can petition at any time for a modification to increase or the non-custodial parent could petition to decrease the support.

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 31, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

CS-30

1
1/31/89
169

AMENDMENTS TO HOUSE BILL NO. ~~84~~ 169

Requested By The Montana County Attorneys Association
Offered By John Connor, Department Of Justice

1. Title, line 7.
Following: "Expunged;"
Insert: "PROVIDING FOR NOTICE OF DISMISSAL AND ALLOWING THE DEFENDANT TO DISCLAIM THE CHARGE FOR PURPOSES OF EMPLOYMENT INQUIRIES."

2. Page 1, line 19.
Following: "dismissed."
Strike: Remainder of line 19 and line 20.

3. Page 1, line 22.
Strike: "defendant's record may not be expunged."

4. Page 1, line 25.
Following: "expunged."
Insert: "A copy of the order of dismissal shall be sent to the prosecutor and to the department of justice accompanied by a form prepared by the department of justice containing identifying information about the defendant. After the order of dismissal has been entered, the defendant may answer employment inquiries as though the charge did not occur."

EXHIBIT 2
DATE 1/31/89
HB 169

Montana Magistrates Association

31 January 1989

Testimony offered in support of HB 169, a bill for an act entitled: "An act providing that when imposition of a sentence is deferred, the deferral period has passed, and the charges are dismissed, the defendant's record may not be expunged."

Given by Wallace A. Jewell on behalf of the Montana Magistrates Association representing the judges of courts of limited jurisdiction of Montana.

The Montana Magistrates Association supports HB 169.

Under current statute and in light of the recent Attorney Generals opinion "to expunge " means to destroy even the original citation. Limited jurisdiction courts have followed the letter of the law and have had difficulty explaining to the auditors the existence of certain moneys.

It is especially difficult to explain where the money came from when even the original order mandating the expungement must be destroyed. The limited jurisdiction court has money in the ledger but no original citation to show why the money was collected and no order to explain why that citation was destroyed.

This particular statute has created some bookkeeping headaches for our courts. We urge you to give it a favorable recommendation and to vote for its adoption into law.

Wallace A. Jewell

EXHIBIT 9
DATE 1/31/89
HB 169

Testimony of Michael Sherwood regarding House Bill 169.

January 31, 1989

OPPOSED

Representing MTLA

Montana law currently provides for two types of probationary sentences: (l) Suspended ; and (2) Deferred. A suspended sentence means that the defendant is actually sentenced to a particular period of imprisonment and the execution of that sentence is in whole or part suspended upon certain conditions. In the event that a defendant should fail to perform those conditions, he may be brought back into court and the sentence that he originally received may be imposed. Upon the lapse of the period of time for which the defendant was originally sentenced (whether he completes probation or imprisoned) , his probation or imprisonment is ended. The conviction stays upon his record regardless of his performance.

A deferred sentence means that the judge does not sentence upon a finding of guilty, but, instead, postpones sentencing for a period of years during which the defendant is on probation subject to certain terms and condtions. If the defendant successfully completes his probation he enjoys the rewards of doing so in that he can then withdraw his plea of guilty, enter a plea of not guilty and the charges are dismissed.

A deferred sentence is a two-edged sword, however, because failure to complete the terms of probation means that a defendant may be brought back into court and sentenced to anything allowable by law up to the maximum sentence for the crime. This could result

EXHIBIT 3
DATE 1-31-89
HB 169

in a more severe sentence than the violation of a suspended sentence.

The whole purpose of a deferred sentence is to allow a young or first time offender the opportunity to clear his record and avoid the label of "felon" or "criminal" for the rest of his life. This purpose is defeated if his record is not expunged. Prior to the enactment of the amendments in 1987 which allow expungment of the record, the practice of law enforcment was to simply record that a deferred sentence had been handed out, that the defendant had completed the terms and conditons of that sentence and the charges had been dismissed.

The whole purpose of a deferred sentence was, therefore, defeated. This type of sentence is an excellent rehabilitation tool and should not be abandoned or rendered inefffective by a return to prior law.

EXHIBIT 8
DATE 1/31/89
HB 169

Amendments to House Bill No. 169
First Reading Copy

Requested by Rep. Daily
For the Committee on the Judiciary

Prepared by John MacMaster
January 31, 1989

1. Title, line 7.
Following: "EXPUNGED"
Insert: "AND MAY BE USED ONLY BY COURTS AND CRIMINAL JUSTICE AND LAW ENFORCEMENT AGENCIES AND ONLY FOR CRIMINAL JUSTICE PURPOSES"

2. Page 1, line 22.
Following: "expunged"
Insert: "; however, the record may be used only by courts and criminal justice and law enforcement agencies and only for criminal justice purposes. The defendant may not waive his right to this limited use, and a waiver by the defendant may not be honored by any person or entity holding or having access to the record."

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 169 DATE JAN. 31, 1989

SPONSOR REP. LEE

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
MICHAEL KEEDY	KALISPELL	X	
WALLY Jewell	MT. MAG. ASSOC	X	
John Connor	DEPT OF JUSTICE MT. County Attys Assn	X	
Michael J. Sherwood	MTLA		X
Thomas N. Lee	Bigfork	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE JAN. 31 BILL NO. HB 169 NUMBER 1

NAME	AYE	NAY
REP. KELLY ADDY, VICE-CHAIRMAN		X
REP. OLE AAFEDT	X	
REP. WILLIAM BOHARSKI	X	
REP. VIVIAN BROOKE		X
REP. FRITZ DAILY	X	
REP. PAULA DARKO		X
REP. RALPH EUDAILY		X
REP. BUDD GOULD	X	
REP. TOM HANNAH	X	
REP. ROGER KNAPP	X	
REP. MARY McDONOUGH		X
REP. JOHN MERCER		X
REP. LINDA NELSON		X
REP. JIM RICE		X
REP. JESSICA STICKNEY		X
REP. BILL STRIZICH		X
REP. DIANA WYATT		X
REP. DAVE BROWN, CHAIRMAN		X

TALLY 6 12

Julie Emge
Secretary

Dave Brown
Chairman

Motion: DO NOT PASS AS AMENDED by Rep. Daily, seconded by Rep. Hannah. Motion FAILED.

Form CS-31

Rep. Addy commented that this is what everybody was trying to do all along. The locality rule, however, does lower the standard. It is an appropriate standard. It says that they are going to take the individual circumstances into account in deciding how to evaluate the evidence. He said he's glad this compromise has been reached and he supports it.

Rep. Brown asked for an explanation of the difference between the Good Samaritan application and what's being done in this bill. Rep. Mercer responded that essentially the Good Samaritan uses the willful and wanton standard and it speaks to doing something without pay and refers to something other than the normal medical setting. The main difference is this protects doctors in the normal course of their business where they are collecting a fee but it doesn't elevate it to the willful and wanton standard. It makes judgment based on the situation and the doctor's capability. The Good Samaritan has more latitude.

A vote was taken on the proposed amendments (EXHIBIT 1) and CARRIED unanimously.

Recommendation and Vote: Rep. Mercer moved HB 57 DO PASS AS AMENDED, motion seconded by Rep. Darko. Motion CARRIED with Rep.'s Brown and Strizich voting Nay.

DISPOSITION OF HOUSE BILL 493

Motion: Rep. Gould moved to TABLE HB 493. Rep. Boharski seconded the motion.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion to TABLE HB 493 CARRIED with a unanimous vote.

DISPOSITION OF HOUSE BILL 169

Motion: Rep. Mercer moved to reconsider previous action taken on HB 169 and remove it from the Table. Rep. Nelson seconded the motion.

Rep. Mercer moved HB 169 DO PASS, motion seconded by Rep. Darko.

Discussion: Rep. Mercer said this is the expungement bill. It presents the idea that if one has a deferred sentence and lives up to it, at the end the record should be cleaned. The concern of the criminal justice people is that they want to keep the information for future use. Judges may also want the information in the future. Also, it's difficult to erase records. The proposed amendment (EXHIBIT 2) would provide that the record not be expunged, but the charge would be put in a confidential criminal justice status so no

one could get access to it except by a district court order.

Amendments, Discussion, and Votes: Rep. Mercer moved the proposed amendments (EXHIBIT 2), motion seconded by Rep. Stickney.

Rep. Rice said this is a real problem for the Attorney General's office. Sometimes there is a clerk of court trying to destroy records and the County Attorney says no and it's a real mess. This is an attempt to solve that problem.

Rep. Mercer said this is attempting to strike a balance by saying that if the charge is dismissed, any and all records that relate to the charge are considered confidential criminal justice information. No one has access to that except criminal justice agencies. If an inquiry was made by anyone, the answer would be "those are criminal justice records and we cannot reply in any way as to whether or not anything exists."

Rep. Brown asked John Connor to explain the problems this issue creates. Mr. Connor said the biggest problems are those that have to do with record keeping responsibilities that various state and local officials have. There is a concern by law enforcement that if someone got a deferred sentence and there was no way ever to find out about it later, that he could continually get deferred impositions of sentence. The concern of the County Attorney's Association and the Department of Justice is that the expungement creates all sorts of problems as to what to do with these records. Some clerks of court are shredding the records and others are ignoring the law altogether.

Rep. Addy said he doesn't have a record as he has never been convicted of anything other than speeding and one reckless driving offense. He said he assumes then, that if anyone wrote to get his record they would say he doesn't have a record. He asked if that was correct. Mr. Connor said he assumed so. Rep. Addy asked if he were convicted of a more serious offense, such as shoplifting, and received a deferred sentence and satisfied the conditions of the deferral and had it erased, the department would then have to write back and say that no information could be released. Mr. Connor said there would have to be some innocuous language that would not suggest the person does or does not have a record. The agency would have to say something like, "This agency is prohibited by law from responding to such inquiries." Rep. Addy said the problem is that there is a difference between the two responses no matter how it is stated. Therefore, you either know a person doesn't have a record or you assume he does and most people will assume the worst. There is a real dilemma there and I'm not sure it could be solved.

Rep. Hannah asked John Connor if, in some jurisdictions an employer would get a report back that someone they had asked about had received a deferred imposition of sentence. Mr. Connor said he believes that is true. He said that from talking to County Attorneys in different jurisdictions he knows that the law is being construed differently and is being effectively managed in some jurisdictions and not in others.

Rep. Hannah asked if the option of the committee is to allow those records to be released as they are currently being released in some jurisdictions or to try and put in a privacy clause to make some attempt to provide insulation so that no information would be sent out. Mr. Connor said yes.

Rep. Hannah said he wasn't aware that there were some jurisdictions where information is currently available on deferred impositions. John Connor said that part of the problem is that the law is relatively new and the Attorney General's opinion of last July interpreting it is very new. The problems with the differences in interpretation stem from the fact that people aren't used to it yet.

Rep. Addy said he really questions whether the problem is interpreting the law or doing a good job of keeping the records. It seems like you're saying it's too much work so we'll just change the law. John Connor said it is not just an administrative inconvenience. Local governments are being exposed to incredible problems with liability. I think this amendment takes care of the defendant and it also cures the administrative problems.

A vote was taken on Rep. Mercer's proposed amendments and CARRIED with Rep.'s McDonough, Addy, Brown, and Strizich voting in opposition.

Rep. Addy moved to TABLE the bill. Rep. McDonough seconded the motion. The motion FAILED.

Recommendation and Vote: Rep. Mercer moved HB 169 DO PASS AS AMENDED, motion seconded by Rep. Rice. Motion CARRIED with Rep.'s McDonough, Wyatt, Strizich, Addy, Nelson, and Brown voting against the motion.

DISPOSITION OF HOUSE BILL 716

Motion: Rep. Eudaily moved to reconsider previous action taken on HB 716 and remove it from the Table. Motion was seconded by Rep. Rice.

The motion CARRIED with Rep. Brooke, Rep. Addy and Rep. McDonough voting Nay.

Rep. Eudaily moved DO PASS, motion seconded by Rep. Gould.

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date FEB. 18, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

2-18-89
1:45 pm

STANDING COMMITTEE REPORT

February 18, 1989

Mr. Speaker: We, the committee on Judiciary report that House Bill 169 (first reading copy -- white) do pass as amended .

Signed: Dave Brown
Dave Brown, Chairman

And, that such amendments read:

1. Title, line 7.
Following: "EXPUNGED;"
Insert: "PROVIDING FOR NOTICE OF DISMISSAL; RESTRICTING ACCESS TO THE RECORDS;"

2. Page 1, lines 19 and 20.
Following: "dismissed." on line 19
Strike: "Upon dismissal of the charges,"

3. Page 1, lines 21 and 22.
Following: "~~expunge~~" on line 21
Strike: "the defendant's record may not be expunged."

4. Page 1, line 25.
Following: "~~expunged.~~"
Insert: "A copy of the order of dismissal must be sent to the prosecutor and the department of justice, accompanied by a form prepared by the department of justice and containing identifying information about the defendant. After the charge is dismissed all records and data relating to the charge are confidential criminal justice information as defined in 44-5-103 and public access to the information can only be obtained by district court order upon good cause shown."

EXHIBIT 2
DATE 2-18-89
HB 169

AMENDMENTS TO HOUSE BILL NO. 169

1. Title, line 7.
Following: "Expunged;"
Insert: "PROVIDING FOR NOTICE OF DISMISSAL AND RESTRICTING PUBLIC ACCESS TO THE RECORD."

2. Page 1, line 19.
Following: "dismissed."
Strike: Remainder of line 19 and line 20.

3. Page 1, line 22.
Strike: "defendant's record may not be expunged."

4. Page 1, line 25.
Following: "expunged."
Insert: "A copy of the order of dismissal shall be sent to the prosecutor and to the department of justice accompanied by a form prepared by the department of justice containing identifying information about the defendant. After the charge is dismissed as provided herein, any and all records or data relating to the charge shall be considered confidential criminal justice information as defined in 44-5-103, MCA." Public access to this type of confidential criminal justice information can only be obtained by district court order upon good cause shown, allowing such access.

CHAIRMAN--BRUCE CRIPPEN
SECRETARY-ROSEMARY JACOBY
NORMAL SCHEDULE==> SITE: ROOM 325

COMMITTEE--(S) JUDICIARY
DAYS: M,T,W,T,F TIME: 10:00 A.M.

OFFICE--ROOM 412

NOTE: BILL WILL BE LISTED TWICE IF REREFERRED BACK TO THE SAME COMMITTEE

BILL	REFER DATE	LATEST DATE/ACTION ON BILL	
HB 135	01/26	04/24--TABLED IN COMMITTEE SPONSOR: MERCER, JOHN	TITLE-REVISE WRONGFUL DEATH AND SURVIVORSHIP DAMAGES
HB 146	01/26	02/24--(H) CHAPTER NUMBER SPONSOR: STRIZICH, BILL	EFFECTIVE DATE: 07/01/89 TITLE-ALLOW TRAINING AT THE MT. LAW ENFORCEMENT ACADEMY FOR NONSERVICE STUDENTS
HB 147	02/02	03/22--(H) CHAPTER NUMBER SPONSOR: WHALEN, TIM	EFFECTIVE DATE: 10/01/89 TITLE-CUSTODIAL PARENT AS PERSONAL REPRESENTATIVE
HB 152	02/02	03/21--(H) CHAPTER NUMBER SPONSOR: ADDY, KELLY	EFFECTIVE DATE: 07/01/89 TITLE-REVISE YOUTH COURT MENTAL COMMITMENT
HB 168	02/06	03/15--(H) CHAPTER NUMBER SPONSOR: LEE, THOMAS	EFFECTIVE DATE: 10/01/89 TITLE-CERTAIN SENTENCES TO BE SERVED CONSECUTIVELY
HB 169	02/28	04/06--(H) CHAPTER NUMBER SPONSOR: LEE, THOMAS	EFFECTIVE DATE: 04/06/89 TITLE-NO EXPUNGMENT OF RECORD WHEN SENTENCE IMPOSITION IS DEFERRED
HB 177 A	02/11	03/23--(H) CHAPTER NUMBER SPONSOR: BROWN, JAN	EFFECTIVE DATE: 01/01/90 TITLE-CREATE ADMINISTRATIVE REVIEW PANEL FOR CHIROPRACTIC MALPRACTICE CLAIMS
HB 178	02/02	03/13--(H) CHAPTER NUMBER SPONSOR: CODY, DOROTHY	EFFECTIVE DATE: 10/01/89 TITLE-TO CLARIFY LAW MANDATING REPORTS OF SUSPECTED CHILD ABUSE AND NEGLECT
HB 179	02/06	03/03--(S) ADVERSE COM RPT ADOPTED (S) JUDICIARY SPONSOR: LEE, THOMAS	TITLE-REMOVE TWO-YEAR LIMIT ON MODIFICATION OF DISSOLUTION, SEPARATION DECREE
HB 185	02/11	03/29--(H) CHAPTER NUMBER SPONSOR: WHALEN, TIM	EFFECTIVE DATE: 10/01/89 TITLE-PROHIBITING DETENTION IN JAIL PENDING MENTAL HEALTH COMMITMENT HEARING
HB 189	01/30	03/20--(H) CHAPTER NUMBER SPONSOR: RICE, JIM	EFFECTIVE DATE: 10/01/89 TITLE-INCREASE SENTENCE FOR CERTAIN INCEST OFFENDERS
HB 204	02/11	04/10--(H) CHAPTER NUMBER SPONSOR: COBB, JOHN	EFFECTIVE DATE: 04/10/89 TITLE-SRS LIEN ON, RATHER THAN SUBROGATION FOR, MEDICAL ASSISTANCE PAID
HB 206	02/08	03/23--(H) CHAPTER NUMBER SPONSOR: GOULD, BUDD	EFFECTIVE DATE: 10/01/89 TITLE-SUSPEND DRIVER'S LICENSE FOR FAILURE TO APPEAR/PAY FOR NO PROOF OF INSURANCE
HB 232	02/17	03/22--(H) CHAPTER NUMBER SPONSOR: BROWN, DAVE	EFFECTIVE DATE: 07/01/89 TITLE-REVISE FEES OF CLERK OF DISTRICT COURT; IMPOSE FEE FOR CONCEALED WEAPON
HB 248	02/08	03/24--(H) CHAPTER NUMBER SPONSOR: MCDONOUGH, MARY	EFFECTIVE DATE: 03/24/89 TITLE-CLARIFY EXEMPTION LAWS RELATING TO WAGES, RETIREMENT BENEFITS
HB 260	01/31	02/23--(H) CHAPTER NUMBER SPONSOR: CLARK, ROBERT	EFFECTIVE DATE: 10/01/89 TITLE-MISDEMEANOR FOR DRIVING WHILE LICENSE IS SUSPENDED/REVOKED IN ANY STATE
HB 265	02/06	03/20--(H) CHAPTER NUMBER SPONSOR: STRIZICH, BILL	EFFECTIVE DATE: 03/20/89 TITLE-REVISE AND REORGANIZE OPTIONS FOR DISPOSITION OF TROUBLED YOUTHS
HB 286	02/06	03/06--(S) 3RD READING FAILED SPONSOR: LEE, THOMAS	TITLE-LOWER COURT MAY PROHIBIT SENTENCED PERSON'S OWNING OR CARRYING WEAPON
HB 295	02/15	04/11--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89

the hospital association amendment would not be objectionable, as well.

Senator Halligan asked where the House amendments originated. Rep. Marks said they were inserted in the House committee. He thought the trial lawyers had given suggestions to that effect. He said he did not object strenuously on the Floor of the House because he hadn't had much time to study the amendments thoroughly.

Senator Mazurek asked if Rep. Marks asked if he would object to the Statement of Intent prepared by the hospital association. Rep. Marks thought it could be helpful.

Closing by Sponsor: Rep. Marks closed. He said the idea came from some people who expressed the high cost of malpractice insurance. They told Rep. Marks that California had a bill like the one proposed. He said that he thought the MMA bill (on obstetrics) was in deep discussion in the House. In the event that did pass, this would give a small measure of support, he said.

Senator Crippen said he had asked Staff Attorney Valencia Lane to review the bill thoroughly. He announced that action would not be taken on the bill this day.

Discussion: Chairman Crippen commented that he understood that there was a coordinating bill. Valencia said she thought HB 57 was to be a substitute bill. If you coordinate it into the existing bill, it wouldn't need the definition sections, she said. Chairman Crippen said he felt Rep. Marks wanted the bill to stand on its own. He asked Valencia to study the amendments suggested by Rep. Marks for action at a further meeting. Senator Mazurek offered to work with Valencia on the amendments.

HEARING ON HOUSE BILL 169

Presentation and Opening Statement by Sponsor:

Representative Tom Lee of Bigfork, District 49, opened the hearing. He said that several people in his area decided they would request this legislation. The Attorney General also requested similar legislation, he said, but that was a different bill. This bill attempts to correct major problems on state and local level regarding the expungement statute which was amended in 1987. The statute, as it now reads, has been interpreted to read that every record on the state and local level that has been completed relating to a

defendant (after he has completed his sentence on a felony) must be destroyed. This includes all references to the defendant and the charge itself. This has created some problems for the state and local officials, he said. The expunged record is no longer available for future sentencings if the defendant gets into trouble again, he commented. And there is also a loss of information for intelligence purposes. He told of a motorcycle accident in which the motorcycle was hit by a drunk driver who had just completed serving a sentence for drunk driving, yet there was no record of it. He, therefore, received another deferred sentence.

Section 46-18-201 states that no one can receive more than one deferred sentence. If the record is destroyed, there is no way of knowing about the first deferred sentence, he said. All records of the sheriff, clerk and recorder, county attorney, identification bureau, and department of Justice must be located and destroyed, he said. This is difficult to do and many local governments are ignoring the law, he told the committee. He said the bill is a fair compromise and allows access only for legitimate law enforcement agencies. Even the defendant himself would not have access without a court order, he said. The effect of the amendments is to afford the same legal protection for his records as is given to adopted children. The amendment on p. 2, lines 1 through 9 became the heart of the bill because it was felt that casual access to the information would defeat the purpose of the bill.

List of Testifying Proponents and What Group they Represent:

Peter Funk, Department of Justice
Mike McGrath, Lewis and Clark County Attorney, appearing for the Montana County Attorneys Association
Senator Fred VanValkenburg, Missoula County Attorney
Wallace Jewell, Montana Magistrates Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Peter Funk supported the bill. He said the statute regarding expungement was inserted by the 1987 Legislature.

There is no existing definition for the term of expungement in Montana statute, he said. That created a problem. An opinion issued by the Attorney General stated that all of the records be physically destroyed. That opinion has generated a great deal of concern among all levels of law enforcement and prosecution, he said. He felt the bill cured the problems caused by the 1987 amendments to the statute.

Mike McGrath said that, if a person was given a deferred sentence and the record is destroyed, the person could get a second deferred sentence for a future offense. And, there is no allowance in statute for a second deferred sentence, he said. He agreed that expungement was a serious record-keeping problem.

Senator Fred VanValkenburg supported the bill for the reasons previously reiterated. He wanted to inform the committee that present law seriously limits prosecutors in asking for sentences. He felt the bill would not inhibit legitimate rights of criminal defendants or innocent individuals. He volunteered to carry the bill on the Floor of the Senate.

Wallace Jewell presented written testimony to the committee (Exhibit 3).

Questions From Committee Members: Senator Halligan asked why the bill couldn't have an immediate effective date. Fred Van Valkenburg urged that it be done.

Senator Mazurek asked why didn't the legislature realize the problems that would result from the legislation passed last session. He remembered hearing testimony was that too much information was getting "out."

Senator VanValkenburg said the main problem stems from the use of the word "expungement." He said there were fairly severe punishments for dissemination of information which should take care of the other problem.

Senator Crippen asked about 44-5-103. Senator VanValkenburg said that was the section that defined criminal justice information. The same statute provides penalties for giving out unauthorized information.

Closing by Sponsor: Rep. Lee closed.

DISPOSITION OF HOUSE BILL 169

Discussion: None

Amendments and Votes: Senator Jenkins MOVED that House Bill 169 have an immediate effective date. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Jenkins MOVED that House Bill 169 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 368

Presentation and Opening Statement by Sponsor:
Representative Vicki Cocchiarella of Missoula, District 59, opened the hearing. She said the bill would provide license revocation and 12 points for negligent vehicular assault. She said it was a simple, housekeeping bill which amended statute existing as a result of an oversight when a 1985 law was passed. She said persons guilty of negligent vehicular assault were: Guilty of driving a vehicle in a negligent manner, driving under the influence of alcohol or drugs or having conduct which causes bodily injury to others. She said that sometimes injuries are worse than death and she felt the offense was serious enough to ask for the license revocation. The oversight was that the traffic points were not being applied as provided for in another section, and felt the 12 points were the correct number to require.

List of Testifying Proponents:

Peter Funk, Department of Justice

List of Testifying Opponents:

None

Testimony:

Peter Funk supported the bill. He said that DUI or causing bodily injury were both worthy of drivers license revocation. He also agreed with the appropriateness of the 12 points for the offenses. He felt the bill could eliminate some of the problems that had occurred.

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 3-13-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN			✓
SENATOR HALLIGAN	✓		
SENATOR HARP			✓
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 14, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 169 (third reading copy -- blue), respectfully report that HB 169 be amended and as so amended be concurred in:

Sponsor: Lee (Van Valkenburg)

1. Title, line 8.
Strike: "AND"

2. Title, line 9.
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 2.
Following: line 9
Insert: "NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval."

AND AS AMENDED BE CONCURRED IN

Signed: _____
Bruce D. Crippen, Chairman

14

scrhb169.314

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 3-13
BILL NO. HB 16

Montana Magistrates Association

13 March 1989

Testimony offered in support of HB 169, a bill for an act entitled: "An act providing that when imposition of a sentence is deferred, the deferral period has passed, and the charges are dismissed, the defendant's record may not be expunged; providing for notice of dismissal; restricting access to the records."

Given by Wallace A. Jewell on behalf of the Montana Magistrates Association representing the judges of courts of limited jurisdiction of Montana.

The Montana Magistrates Association supports HB169.

Under current statute and in light of the recent Attorney Generals opinion "to expunge " means to destroy even the original citation. Limited jurisdiction courts have followed the letter of the law and have had difficulty explaining to the auditors the existence of certain moneys; it is especially difficult to explain where the money came from when even the original order mandating the expungement must be destroyed. The limited jurisdiction court has money in the ledger but no original citation to show why the money was collected and no order to explain why that citation was destroyed.

This particular statute has created some bookkeeping headaches for our courts. We urge you to give it a favorable recommendation and to vote for its adoption into law.

Wallace A. Jewell

DATE 3-13-89

COMMITTEE ON Senate Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check Support
Richard L. Webb	Sweet Grass Co High School	HB 489	✓
Steve Brawner	MT Hospital Assn	HB 57	✓
Marvin Carter	Laurel Schools	HB 489	✓
Lee Kenney	Capital High School	HB 489	✓
Michael J. Sherwood	MTLA	HB 57	
Thomas M. Lee	HD 49, Bigfork	HB 169	✓
Jerry Loendorf	Mt. Med. Assn	HB 57	amend
Bob Marks	Rep	HB 57	
LARRY AKEY	MT HEALTH NETWORK	HB57	✓
Jim Ahrens	Mt Hosp Assoc	HB57	
Fred VanValkenburg	Senate Dist. 30	HB169	✓
Peter Funk	Dept. of Justice	HB 489	✓
		HB 169	✓
		HB 368	✓

CR 463
1-6-89

HOUSE BILL NO. 169

INTRODUCED BY LEE, BISHOP, CONNELLY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT WHEN IMPOSITION OF A SENTENCE IS DEFERRED, THE DEFERRAL PERIOD HAS PASSED, AND THE CHARGES ARE DISMISSED, THE DEFENDANT'S RECORD MAY NOT BE EXPUNGED; PROVIDING FOR NOTICE OF DISMISSAL; RESTRICTING ACCESS TO THE RECORDS; AND AMENDING SECTION 46-18-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-204, MCA, is amended to read:

"**46-18-204. Dismissal after deferred imposition.** Whenever the court has deferred the imposition of sentence and after termination of the time period during which imposition of sentence has been deferred, upon motion of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw his plea of guilty or may strike the verdict of guilty from the record and order that the charge or charges against him be dismissed. ~~Upon dismissal of the charges, the court shall send an order directing the department of justice to expunge the defendant's record may not be expunged. The order must adequately identify the defendant, such as by sex, race, date of birth, and the current status of the charges to be expunged.~~ A COPY OF THE ORDER OF DISMISSAL MUST BE SENT TO THE PROSECUTOR AND THE DEPARTMENT OF JUSTICE, ACCOMPANIED BY A FORM PREPARED BY THE DEPARTMENT OF JUSTICE AND CONTAINING IDENTIFYING INFORMATION ABOUT THE DEFENDANT. AFTER THE CHARGE IS DISMISSED ALL RECORDS AND DATA RELATING TO THE CHARGE ARE CONFIDENTIAL CRIMINAL JUSTICE INFORMATION AS DEFINED IN 44-5-103 AND PUBLIC ACCESS TO THE INFORMATION CAN ONLY BE OBTAINED BY DISTRICT COURT ORDER UPON GOOD CAUSE SHOWN."

NEW SECTION. **SECTION 2.** EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

-End-